

JACK CORMAN

IBLA 90-46      Decided June 6, 1991

Appeal from a decision from the Acting Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management, affirming an assessment of \$5,000 for drilling a gas well on Indian Lease No. 69039 without a permit. NM SDR 89-32.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties

Drilling a gas well on a Federal or Indian oil and gas lease without obtaining the prior approval of BLM is a violation of 43 CFR 3162.3-1(c), and, under 43 CFR 3163.1(b)(2), BLM is required to impose an assessment of \$500 a day for each day the violation exists, including the days the violation existed prior to discovery, not to exceed \$5,000.

2. Oil and Gas Leases: Civil Assessments and Penalties

A person who holds no interest in a Federal or Indian oil and gas lease, yet, through inadvertence, ignorance, or dishonesty, drills a well on such a lease, is liable for violations of the Federal oil and gas operating regulations and may be assessed for drilling the well without obtaining prior approval.

APPEARANCES: Jack Corman, pro se; Margaret C. Miller, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jack Corman has appealed from a September 7, 1989, decision of the Acting Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management (BLM), affirming the Tulsa District Manager's assessment of \$5,000 for drilling a gas well on Indian Lease No. 69039 without prior BLM approval.

The Choctaw and Chickasaw Indian Tribes and Dyco Petroleum Corporation (Dyco) executed Indian Lease No. 69039 on March 11, 1975, and the Bureau of Indian Affairs (BIA) approved the lease on July 11, 1975. The lease embraces 150 acres of unallotted tribal lands in the S $\frac{1}{2}$  N $\frac{1}{2}$  SE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  sec. 14, T. 6 N. R. 14 E., Indian Meridian, Pittsburgh

County, Oklahoma, and is subject to a watershed and basin easement held by the City of McAlester, Oklahoma. On July 1, 1976, BIA approved, insofar as it affected restricted Indian interests in sec. 14, Oklahoma Corporation Commission Order No. 72439, which established 640-acre drilling and spacing units for the production of gas condensate from the Hartshorne Formation underlying an area including section 14 (MC-IND S 857).

On December 21, 1988, Corman, who held no record interest in Indian Lease No. 69039, spudded the No. 2 Stubblefield well on that lease. 1/ By letter dated January 3, 1989, the Chief, Branch of Fluid Operations, Tulsa District Office, BLM, notified Corman that the No. 2 Stubblefield well had been drilled without approval, and requested Corman, as operator of the well, to file an acceptable after-the-fact application for permit to drill (APD) and various well reports. BLM informed Corman that failure to file the requested documents within 30 days of receipt of the letter would subject him to a civil penalty of up to \$500 per day pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 43 U.S.C. § 1719 (1988), and 43 CFR 3163.1(d) and 3163.2(a), (b). Corman filed an after-the-fact APD which was considered to be complete on February 6, 1989. 2/

By decision dated June 26, 1989, the Chief, Branch of Fluid Operations, Tulsa District Office, BLM, assessed Corman \$5,000 in noncompliance damages pursuant to 43 CFR 3163.1(b)(2), based on Corman's failure to observe 43 CFR 3162.3-1(c), which provides that an APD for each well must be submitted to BLM for approval and that no drilling or preliminary surface disturbance may be undertaken prior to approval of the permit to drill.

Corman sought State Director review of the assessment, pursuant to 43 CFR 3165.3. In his written submission, Corman explained that he had not planned to drill the well on the Indian lease, and that he had arranged

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1/ Corman explains that he intended to locate the well on fee land north of the Indian lease, but that when the rig was moved onto the staked land, the surface owner raised some questions and Corman's engineer found a problem with the surface location. The rig was then moved about 100 feet south-southeast of the staked location, and the well drilled. The new well location was within Indian Lease No. 69039. See "Facts" attached to Corman's statement of reasons for appeal (SOR).

2/ Corman alleges that he filed the APD on Dec. 28, 1988; however, the record shows that the APD was received by the Tulsa District Office on Jan. 3, 1989. BLM found the APD to be deficient partially because it did not contain a "Designation of Operator" from each lessee naming Corman as the operator of the lease. The record contains a Jan. 27, 1989, letter from Dyco refusing to execute a "Designation of Operator" on the grounds that it did not recognize Corman's right to operate a well in sec. 14, and that Corman had breached the operating agreement which named Dyco as the operator of the unit covering sec. 14. Corman completed the well as a gas well on Mar. 20, 1989, and on June 8, 1989, BLM accepted the after-the-fact APD for record purposes.

with the City of McAlester, Oklahoma, to pay \$3,000 in surface damages to it for the well. He stated that when the well location was changed due to problems with the surface owner and the surface conditions of the planned site, the City notified the Indian tribes that the well was situated on Indian land and turned his \$3,000 surface damage payment over to them. He claimed that once he was notified by BLM that the well might be located on Indian land, he filed an APD for the well with BLM, noting that his APD was determined to be complete prior to the end of the 30-day compliance period established by BLM's January 3, 1989, letter. He further indicated that due to problems encountered while drilling the well, the bottom of the well is off the vertical by 60 to over 100 feet and may not be located on the Indian lease. Corman also stated he did not become a lessee under Indian Lease No. 69039 until June 16, 1989, and that at the time the well was drilled, Dyco was the operator of the unit covering section 14, including the Indian lease. <sup>3/</sup>

In light of the above facts, Corman argued that the purpose of 43 CFR 3163.1(b)(2) would not be served by assessing him \$5,000. Additionally, he contended that 43 CFR 3163.1(b)(2) only applies to lessees and unit operators, and that he was neither when he drilled the well. He also argued that BLM had failed to give the lessee of record written notice concerning civil penalties, as it was required to do by 43 CFR 3165.3(a). He concluded that he had done all he could do to comply with BLM's regulatory requirements once he had been informed that the well had been placed on Indian land, and that the \$5,000 assessment was not justified.

In his September 7, 1989, decision, the Acting Deputy State Director, after recounting the information presented by Corman, summarily affirmed the District Office decision without discussion of the arguments raised by Corman. <sup>4/</sup>

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<sup>3/</sup> Between 1975 and 1978 Dyco assigned a total of 50 percent of its interest in Indian Lease No. 69039 to other parties. Samson Resources Co. assigned its 25-percent interest in the lease to Corman by an assignment which it executed on May 11, 1988, with a stated effective date of Feb. 1, 1988. Similarly, BCS Natural Resources Corp. transferred its 12-1/2-percent interest in the lease to Corman by an assignment which it executed on Sept. 6, 1988, to be effective Mar. 1, 1988. Corman signed both of these assignments on Mar. 6, 1989, signifying his acceptance of them. BIA approved the assignments on June 14, 1989, and Corman became a lessee of record with a 37-1/2-percent interest in Indian Lease No. 69039 as of that date.

<sup>4/</sup> Corman made an oral presentation on Aug. 18, 1989, during State Director review. The record, however, contains no record of that presentation. Clearly, when BLM grants State Director review and, as part of that review, allows a party to make an oral presentation, some effort must be made to commemorate that event and make it part of the record in the case, whether it be through the utilization of an audio tape, a written verbatim transcription, or a written summary of the presentation.

In his SOR, Corman repeats his contention that 43 CFR 3163.1 applies only to lessees and that 43 CFR 3165.3 requires written notice to lessees of violations. 5/ He argues, therefore, that BLM was authorized to serve notice of his violation only on the lessees of record of the Indian lease or the designated operator of the Indian lease when he drilled the well, the assessment against him is improper and should be reversed. 6/

In its answer, BLM argues that assessments pursuant to 43 CFR 3163.1(b)(2) for drilling without approval or causing preliminary surface disturbance without approval are immediate and retroactive and do not require a 30-day notice period during which the violation can be corrected. It suggests that Corman has confused this assessment with civil penalties authorized by 43 CFR 3162.3, about which he was warned in BLM's January 3, 1989, letter allowing him 30 days to submit an after-the-fact APD. Since he timely filed his after-the-fact APD, BLM notes that Corman was never charged with a civil penalty. BLM also asserts that Corman has failed to show that the well bottoms outside the boundaries of the Indian lease and that even if he had, he caused unauthorized surface disturbance on that lease.

BLM submits that 43 CFR 3163.1 is directed to operating rights owners or operators, not lessees as Corman asserts. While recognizing that Corman was not the designated operator at the time the well was spudded, BLM contends that he was the operator-in-fact as evidenced by the surface damage and the model turnkey contract attached to his SOR. Alternatively, BLM argues that Corman assumed the liabilities of his predecessor lessees when he became a lessee in June 1989, including the responsibility for the unauthorized drilling.

In reply, Corman apparently acknowledges that 43 CFR 3163.1 applies to operating rights owners and operators, but stresses he was neither at the time he drilled the unapproved well. He challenges BLM's assertion that he assumed the liabilities of his assignors, arguing that there is no evidence that he assumed any such obligation or liability, or that his assignors had any liability, since they were not the operators of the unit in question. He contends that the Indian lessors received \$3,000 for surface damages after the well was spudded with full knowledge of the well's location and that they and BLM are estopped "to agree to the amount of surface damages and then assess a \$5,000.00 charge for drill[ing] without approval

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5/ At all times relevant to this appeal, the current version of 43 CFR 3163.1, which is directed to operating rights owners and operators, was in effect. Corman apparently referred to an earlier version which was directed to lessees. See 43 CFR 3163.1 (1987). A lessee may also be an operating rights owner. 43 CFR 3160.0-5(p).

6/ Corman also requested an evidentiary hearing pursuant to 43 CFR 3165.3(c). By order dated Nov. 22, 1989, the Board denied this request, explaining that the cited regulation applies only to notices of proposed penalties and not to an assessment, such as the one levied here.

or for causing surface disturbance" (Reply at 1). He further notes that the Indian lease was unitized with all land in the 640-acre section, and maintains that the Indian lessors suffered no monetary loss as a result of his drilling.

[1] Under 43 CFR 3162.3-1(c), an operator must submit to BLM for approval an APD for each well, and no drilling operations or preliminary surface disturbance may be commenced prior to BLM's approval of the APD. BLM imposed the assessment against Corman in accordance with 43 CFR 3163.1(b)(2) which provides:

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

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(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000 \* \* \*.

As the Board stated in both Magness Petroleum Corp., 113 IBLA 214, 216 (1990), and Noel Reynolds, 110 IBLA 74, 76 (1989), 43 CFR 3163.1(b)(2) indicates the Department's "policy that drilling without approval, or causing surface disturbance preliminary to drilling without approval, constitutes an instance of noncompliance 'of such a serious nature as to warrant the imposition of immediate assessments upon discovery.'" See also Jack Hammer, 114 IBLA 340, 343 (1990). In the preamble to the rulemaking, BLM explained that prior approval "is critical to proper multiple use management of the public lands." 52 FR 5384, 5388 (Feb. 20, 1987).

Due to the seriousness of disturbing the surface or drilling without prior BLM approval, the regulatory scheme provides for the imposition of an immediate assessment without notice or an opportunity to abate. Magness Petroleum Corp., *supra*; Noel Reynolds, *supra*. See 52 FR at 5387. Thus, BLM was not required to give notice before it assessed Corman for drilling without an approved APD.

[2] Corman emphasizes that he was neither an operating rights owner nor an operator of the Indian lease at the time he drilled the No. 2 Stubblefield well, arguing that because he had no interest in the lease, he cannot be assessed under 43 CFR 3163.1(b)(2). 7/ In essence, Corman

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7/ Although 43 CFR 3163.1(b)(2) does not explicitly refer to operating rights owners or operators, 43 CFR 3163.1(a), (c), and (d) contain such references.

contends that although he was a trespasser who illegally entered an Indian lease and drilled a well without a permit, BLM has no authority under the oil and gas operating regulations to assess him for doing so, despite its ability to levy such assessments against operating rights owners and operators who fail to obtain prior approval before drilling a well. We cannot countenance such an interpretation of the regulations.

We find that persons who, through inadvertence, ignorance, or dishonesty, enter onto Federal or Indian leases and conduct oil and gas operations thereon without authorization are nevertheless subject to the oil and gas operating regulations and may be assessed for violations of those regulations. Cf. Delight Coal Corp., 1 IBSMA 186, 199-200, 86 I.D. 321, 328 (1979) (interpreting the term "permittee," as it related to the surface mining initial regulatory program, to include "those persons who, through ignorance or dishonesty, fail to get a permit," and concluding that, during the initial regulatory program, there was no requirement that a person actually hold a permit in order to be subject to civil penalties for violating permit conditions, regulations, or statutory provisions). Unlawful use of Federal land should not shield the user from the consequences of failure to comply with regulatory requirements. Thus, we will not allow Corman to employ his illegal status to deny statutory and regulatory responsibilities. 8/

Moreover, Corman arguably falls within the expanded definition of operator found in the regulations, and is properly subject to an assessment for drilling a well without an approved APD for that reason. An operator is "any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof." 43 CFR 3160.0-5(q). 9/ Thus, the definition of "operator" was intended to expand the number of persons or entities responsible for complying with the terms of Federal and Indian oil and gas leases and regulations. 10/

In his after-the-fact and attachments, which are dated December 21, 1988, the date the well was spudded, Corman named himself as the operator and as the lessee's or operator's field representative

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8/ We note that because Corman had no legal right to use the lands embraced by Indian Lease No. 69039 at the time he drilled his well, he may also be liable for trespass damages.

9/ The regulations define an operating rights owner as "a person or entity holding operating rights in a lease issued by the United States. A lessee may also be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title." 43 CFR 3160.0-5(p).

10/ The regulations recognize that approval of an APD "does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations." 43 CFR 3162.3-1(i).

responsible for assuring compliance with the approved surface use and operations plan. He also signed the certification required to be signed by the lessee or operator submitting the APD. By these representations, Corman notified BLM that he was accepting responsibility for conducting operations on Indian Lease No. 69039. Thus, despite the refusal of Dyco in January 1989 to designate Corman as the operator of the lease, Corman arguably became a de facto operator of the lease.

Finally, we find neither Corman's payment of \$3,000 to compensate for surface damages nor the claimed lack of monetary loss to the Indian lessors to have any bearing on the validity of the assessment for drilling without prior approval. Due to the serious nature of the violation, the Department has determined by regulation that such action mandates an assessment of a particular amount. Thus, we must reject Corman's argument that because the Indian lessors suffered no damage, no assessment may be imposed. <sup>11/</sup>

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

I concur:

James L. Burski  
Administrative Judge

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<sup>11/</sup> To the extent Corman is arguing that BLM is estopped from imposing an assessment, we find that Corman has failed to establish any of the elements necessary to support estoppel against the Government. See, e.g., Terra Resources, Inc., 107 IBLA 10, 13-15 (1989).

